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August 13, 2012

*Via Electronic Filing*

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Notice of Ex Parte Presentation  
Entertainment Software Association  
CG Docket No. 10-213**

Dear Ms. Dortch:

This is to notify you that on Thursday, August 9, 2012, Christian Genetski, Senior Vice-President and General Counsel of the Entertainment Software Association (“ESA”), Michael Warnecke, ESA Senior Policy Counsel, and Bill LeBeau, Holland & Knight LLP (collectively, the “ESA Representatives”), met with Kris Monteith, Acting Chief, Consumer and Governmental Affairs Bureau; Greg Hlibok, Chief, Disability Rights Office; and Rosaline Crawford, Eliot Greenwald, John Herzog, and Jarvis Grindstaff of the Disability Rights Office.

The ESA Representatives discussed the ESA’s pending waiver petition in the Advanced Communications Services proceeding.<sup>1</sup> We engaged in substantial discussion regarding the boundaries of the proposed waiver class descriptions, as initially set forth on page 4 of the Petition. We explained how the definitions of the classes ensure consistency with the statutory requirement that any proposed waivers are for offerings that have a primary purpose other than advanced communications services (“ACS”). Consistent with pages 6-7 of the ESA’s most recent reply comments,<sup>2</sup> we added that the proposed class definitions are intentionally prospective in order to include offerings that are not yet available in the marketplace but have, as

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<sup>1</sup> See ESA Petition for Waivers of 47 C.F.R. §§ 14.1 *et. seq.*, CG Docket No. 10-213 (filed March 21, 2012) (the “Petition”).

<sup>2</sup> Reply Comments of the Entertainment Software Association, CG Docket No. 10-213 (submitted June 25, 2012) (“ESA June Reply Comments”).

designed, game play as their primary purpose. We noted that offerings within the proposed classes are broadly recognized as having a primary purpose of playing, enabling or distributing games and cited the ample factual record based on the factors set forth in the Commission's recent order establishing class waivers along with other ACS rules.<sup>3</sup> We distinguished general-purpose or non-game offerings that would not be within the defined classes. We emphasized how the class definitions are designed to handle potential, albeit limited, issues at the boundaries of the proposed classes, and referred to the benefits of waivers with respect to the many offerings clearly within the proposed classes.

The ESA Representatives also responded to matters relating to the duration and possible implementation of the proposed waivers, including points addressed in pages 21-22, 27, and 34-36 of the Petition as well as pages 8-9 of the ESA June Reply Comments. We offered our understanding of key terms of the *ACS Order* relating to ACS class waivers, including product lifecycle, and noted the evidence already in the docket relating to these issues. We explained that many Class III offerings that currently offer some form of ACS, such as some massively multiplayer online games, require, similar to Class I offerings, several years to design and develop and may continue to be supported by their developers for many years.<sup>4</sup> We commented that other game software may use an established "engine" for several years, notwithstanding possible changes to the scope of content available within the game. We agreed that, like other consumer offerings, new offerings within the proposed classes would not be able to incorporate material changes to their design during a period immediately prior to their entrance into the marketplace. We discussed how any waiver may work in practice, including with regard to potential future complaints or offerings that may fall outside any of the proposed classes, and why the proposed waivers would limit potential confusion for consumers and industry.

We noted the support for the ESA's waiver petition in the most recent comment round and prior submissions to this docket. We also discussed various procedural matters relating to action on our waiver petition, including the suggested six-month timetable for waiver review announced in the *ACS Order*. In addition, we reiterated that any waiver should be renewable, subject to the circumstances and an appropriate showing at the time of the renewal request,<sup>5</sup> and mentioned points addressed on page 36 of the Petition, including information already in the docket regarding voluntary efforts by industry participants to increase accessibility to video games independent of the current proceeding.

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<sup>3</sup> *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14638-42 (2011) ("*ACS Order*"). See, e.g., ESA June Reply Comments at 6-7; Petition at 18-21, 26-27, 31-34 & Exhibits A-C.

<sup>4</sup> See, e.g., Petition at 33-34, 35 & n. 82 (noting that "lengthy design cycles are common in the video game industry").

<sup>5</sup> See, e.g., Petition at 22, 27 & 34.

Pursuant to Section 1.1206 of the Commission rules, we are electronically filing this letter with your office and are electronically providing a copy of this submission to the meeting attendees. Please note the change in this law firm's street address, as needed, and please let the undersigned know if you have any questions relating to this filing.

Respectfully submitted,

/s/ Bill LeBeau

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